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# The State of Law in *Richard II*

DONNA B. HAMILTON

NEAR THE END OF THE SPEECHES OF WARNING and instruction that Gaunt delivers on his deathbed to the wayward Richard II, one encounters the passage,

Landlord of England art thou now, not king,  
Thy state of law is bonds slave to the law.<sup>1</sup>  
(II.i.113–14)

Although it is evident that Gaunt is expressing displeasure with Richard, the substance of his complaint has not always been clear. A. P. Rossiter, for example, has described the passage as “hopelessly obscure.”<sup>2</sup> At issue is the relationship between king and law. To understand Gaunt’s speech one must sort out the distinction the old man is drawing between landlord and king.

When this passage is glossed in modern editions of the play, the readings nearly always suggest that the second line stands in apposition to the first, presumably repeating in different words what the first line says. A consequence of this assumption is the interpretation that Gaunt is accusing Richard, as J. Dover Wilson says, of having “diminish[ed] the royal prerogative.”<sup>3</sup> Citing J. C. Smith, Wilson offers the following paraphrase of the second line: “Your legal status as king (‘in all causes supreme’) is now amenable to the common law like that of any other mortgagee.” Similarly G. L. Kittredge, basing his reading on the glosses of Samuel Johnson and Edmund Malone, writes, “Your legal status is no longer that of supreme King of England by divine right; for you are now as subject to the law in regard to the whole realm as any landlord is with reference to his private estate when he has given a lease of it.”<sup>4</sup> The Arden, Pelican, and Riverside editions of the play all offer essentially the same explanation.<sup>5</sup>

<sup>1</sup> All references to Shakespeare’s plays are from the *Arden Shakespeare* editions, including Peter Ure, ed., *King Richard II* (London: Methuen, 1956) and A. R. Humphreys, ed., *The Second Part of King Henry IV* (London: Methuen, 1967).

<sup>2</sup> A. P. Rossiter, ed., *Woodstock* (London: Chatto and Windus, 1946), p. 48.

<sup>3</sup> J. Dover Wilson, ed., *Richard II* (Cambridge: Cambridge Univ. Press, 1939).

<sup>4</sup> G. L. Kittredge, ed., *Sixteen Plays of Shakespeare* (Boston: Ginn, 1946).

<sup>5</sup> Ure, ed., *Richard II*; Matthew Black, ed., *Richard II, Pelican Shakespeare* (Baltimore: Penguin, 1957); G. Blakemore Evans, ed., *The Riverside Shakespeare* (Boston: Houghton Mifflin, 1974).

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These glosses raise problems because their phrasing, particularly the references to supremacy, seem incompatible with certain notions about kingship to which recent historians have drawn our attention. These notions include the recognition that a king who ruled by divine right was also, in theory and in practice, subject to the law; he was to rule according to the law, and his power derived from the law.<sup>6</sup> Glosses that derive their authority from nineteenth-century scholarship proceed on the assumption that the king is not subject to the law; they suggest, therefore, that the lines in question present Richard as having declined from a condition of supremacy to one in which he is subject to the law. What I wish to show in the following pages is that, on the issue of king and law, *Richard II* reflects the views of the playwright's own time, as historians now understand those views.

# I

To arrive at a better reading of Gaunt's speech, it is necessary to recognize at the outset that the relationship of the lines to each other is not that of apposition. Rather, they express a paradox: a king who acts like a landlord instead of a king becomes in some sense a slave.

Some of the best help for these lines is available in that storehouse of political thought, *De Republica Anglorum* (1583), by Thomas Smith. Smith's definition of commonwealth has as its core a statement about the proper relationship between a king and his people. In his description of what that relationship *should* be, Smith includes a comment about what it should *not* be, namely the kind of relationship that existed between a Roman landlord and his slaves:

A common wealth is called a society or common doing of a multitude of free men collected together and united by common accord & covenantes among themselves, for the conservation of themselves as well in peace as in warre. . . . And if one man had as some of the olde Romanes had. . . .V. thousande or L. thousande bondmen whom he ruled well . . . yet that were no common wealth: for the bondman hath no communion with his master, the wealth of the Lord is onely sought for, and not the profit of the slave or bondman. For as they who write of these things have defined, a bondman or a slave is as it were . . . but the instrument of his Lord, as . . . the saw, the chessyll and gowge is of the charpenter. Truth it is the charpenter looketh diligently to save, correct and amend all these: but it is for his own profit, and in consideration of him selfe, not for the instruments sake . . . and there is no mutuall societie or portion, no law or pleading betweene thone and thother.<sup>7</sup>

<sup>6</sup> G. R. Elton, "Introduction" to J. N. Figgis, *The Divine Right of Kings* (New York: Harper Torchbook edition, 1965), reprinted in G. R. Elton, *Studies in Tudor and Stuart Politics and Government*, 2 vols. (London: Cambridge Univ. Press, 1974), II, 193–214. Elton notes the ways that later historians have modified Figgis' explanation of kingship and speaks of the more recent emphasis on the Renaissance kingship as law-centered, its power being derived both from God and from the people. The standard work on kingship as law-centered is Ernst H. Kantorowicz, *The King's Two Bodies* (Princeton: Princeton Univ. Press, 1957). See also Ernest Talbert, *The Problem of Order* (Chapel Hill: Univ. of North Carolina Press, 1962), pp. 3–64; Brian Tierney, "Bracton on Government," *Speculum*, 38 (1963), 295–317; Ewart Lewis, "King Above Law? 'Quod Principi Placuit' in Bracton," *Speculum*, 39 (1964), 240–69; R.W.K. Hinton, "English Constitutional Theories from Sir John Fortescue to Sir John Eliot," *English Historical Review*, 75 (1960), 410–25; Conrad Russell, "The Theory of Treason in the Trial of Stafford," *EHR*, 80 (1965), 30–50; and G. R. Elton, "The Rule of Law in Sixteenth-Century England," *Studies in Tudor and Stuart Politics of Government*, I, 260–84.

<sup>7</sup> Thomas Smith, *De Republica Anglorum* (London, 1583), Book I, Ch. 10, sig. Ci<sup>v</sup>–Cii<sup>r</sup>. In

For Smith, the keystone of a commonwealth is not the king's royal prerogative, his power, or his supremacy, but the well-being of those he rules. By contrast, a landlord sees his people as slaves, as the means by which he enlarges himself; they exist only to increase his wealth and profit. Their well-being is of concern only in the sense that they must be kept in good condition, like tools, if they are to function efficiently in fulfilling the tasks he has for them. And because they have no value except insofar as they are useful to him, they can make no demands upon him, can claim no rights: "There is no mutuall societie or portion, no law or pleading betweene thone and thother."

Just as it is clear in Smith's discussion that this relationship between landlord and people is antithetical to the idea of a commonwealth, so is it clear in the line by Gaunt—"Landlord of England art thou now, not king"—that he would prefer to see Richard behave like a king, not a landlord. Significantly, the issue for Gaunt is not the matter of the king's royal prerogative, but the well-being of those the king rules. As Gaunt has told York before Richard enters the scene, Richard's "insatiate . . . consuming" rule poses a grave threat to all that England is and represents, both at home and abroad. In overtaking the commons, in using blank charters to gather larger revenues, Richard has managed to reduce a demi-Paradise "to a tenement or pelting farm." The profit of the ruler, not that of the people, is being advanced. For Richard to act like a landlord is not to diminish the royal prerogative, then, but to act as though the royal prerogative allows a king to do anything he wishes.

For an interpretation of the monarchy of Richard II which coincides with this point of view Shakespeare need have gone no farther than *The Mirror for Magistrates*, Raphael Holinshed's *Chronicles*, or the anonymous *Woodstock*, if indeed that play preceded Shakespeare's.<sup>8</sup>

## II

In *The Mirror for Magistrates*, where there are two tragedies that describe Richard's reign, two themes dominate: Richard's lust and his disregard for law, two sides of the same coin. In the *Mirror's* tragedy of Richard, which names the King in the title as one who was "for his evyll governaunce deposed,"<sup>9</sup> Richard identifies himself as one driven solely by self-interest: "I am a King that ruled all by lust," and one whose every action as king, including the heavy taxing of the people, was calculated for the "mayntenaunce" of "my lecherous minde" (p. 113). Do not spare any details of "My vicious story," he tells Baldwin, but "paynt it out, that rulers may beware / Good counsaile, lawe, or vertue to despyse. / For realmes have rules" (pp. 112–13). The connection

*The Life of the Renowned Sir Philip Sidney* (London, 1652), sig. Ii<sup>v</sup>, Fulke Greville uses metaphors similar to Smith's when he describes Sidney's displeasure with the French government for having "transformed her Gentry into Peasants, her Peasants into slaves, Magistracy into Sale Works, Crown-reverence into Impositions. And therein likewise published the differences between Monarchs, and Tyrants so clearly to the world, as hereafter all Estates, that would take upon their necks the yoke of Tyranny, must justly be repented voluntary slaves in the choice of that passive bondage." Talbot, *The Problem of Order*, pp. 22–23, 44–45, discusses Smith's definition of a commonwealth and its similarity to that of Richard Hooker; on pp. 89–117 he discusses Sidney's attitude toward the relationship between king and law. On "landlord," see also Quentin Skinner, *The Foundations of Modern Political Thought*, 2 vols. (Cambridge: Cambridge Univ. Press, 1978), pp. 226–27.

<sup>8</sup> For discussion of the relationship between *Woodstock* and *Richard II*, see Rossiter, ed., *Woodstock*, pp. 47–53; and Ure, ed., *Richard II*, pp. xxxv–xl.

between Richard's improper behavior and the people's growing insecurity is further explicated in the tragedy of Robert Tresilian, Richard's corrupt and lawless chief justice, whose monologue stands at the beginning of the *Mirror*. Presenting himself as fully complicit in all of Richard's dealings, and depicting Richard as one who was guilty of "clayming power absolute," Tresilian describes how skillful they became at "wresting the sence of lawe" to satisfy "our princes pleasure" (p. 73). Before long "the subjecte was not sure / Of lyfe, lande, nor goods" (p. 77), a situation that shortly led to a "Baronye" who, "not bearyng this abuse, . . . called a parlyament / Franke and free for all men without check to debate / As well for weale publycke, as for the princes state" (p. 78). The result of this parliament, Tresilian says, was that some of Richard's bad counselors were taken from him and Tresilian himself was sent to the gallows.

Among the many details Holinshed includes are twenty-nine of the thirty-three articles of deposition brought before Parliament once Richard was taken prisoner. The main thrust of these articles is that Richard is guilty of "subverting the law." His subjects charge him with saying "that the lawes of the realm were in his head, and sometimes in his brest, by reason of which fantastical opinion, he destroyed noble men, and impoverished the poor commons."<sup>10</sup> The observation in this last article that Richard's abuse of law involved abuses of the rights and well-being of the commons typifies an interpretation of Richard's reign that runs throughout Holinshed's account—an interpretation frequently lost or greatly diminished when the sources for the play are excerpted and printed in editions of the play or in editions of Shakespeare's sources. Holinshed refers repeatedly to the unfair demands Richard has made upon the people's purses and cites Parliament's warning to Richard: "as that king cannot be poore that hath rich people, so cannot he be rich that hath poore commons" (sig. Ttiii'). Concern for the commons also marks Holinshed's account of York's desertion of Richard. As Holinshed explains, York was convinced that "the glorie of the publicke wealth of his cuntry must needs decaie" (sig. Bbbvi') under such a king as Richard has become.

The presentation of Richard in *Woodstock* is consistent with that in the *Mirror* and in Holinshed. *Woodstock* contains deprecatory references to Richard as one who is behaving like a landlord<sup>11</sup>; interestingly, it also employs metaphors of slavery to define the way Richard thinks of and treats his subjects. At one point Richard promises Tresilian, who has just urged him to be "as a tyrant" to the commons (II.i.24), that he will "yoke their necks / And make them bend to our obedience" (II.i.52). Later, when the shrieves of Kent and Northumberland come to Tresilian to protest Richard's blank charters, they emphasize that their obligations to the King do not make them devoid of rights, do not make them "bondslaves":

We are free-born, my lord . . . yet do confess  
Our lives and goods are at the King's dispose:

<sup>9</sup> *The Mirror for Magistrates*, ed. Lily B. Campbell (London: Cambridge Univ. Press, 1938; rept. New York: Barnes and Noble, Inc., 1960), p. 111.

<sup>10</sup> Raphael Holinshed, *The Third Volume of Chronicles, beginning at Duke William the Norman* (London, 1587), sig. Ccciii'. Edward Hall, *The Union of the Two Noble and Illustre Families of Lancastre & Yorke* (London, 1548), sig. Aiii, records that the nobility judged Richard's seizure of Gaunt's lands "to bee unlawful, unjust and ungodly" and that York's desertion was also due to his observing "the kyng breake and violate all lawes, all justice and equitie."

<sup>11</sup> *Woodstock*, IV.i.146, 210, 244; V.i.90; V.iii.106.

But how, my lord?—like to a gentle prince  
 To take or borrow what we best may spare;  
 And not, like bondslaves, force it from our hands.  
 (IV.iii,34–38)

### III

In Shakespeare's *Richard II*, the view that Richard's activities are bad because they harm the commonwealth is nearly everywhere present. In addition to Gaunt's references to Richard as landlord, there are regular references to the rights and desires of the commons.<sup>12</sup> Such references furnish a significant background against which to consider a king who speaks of his people as "slaves" deserving no respect, no "reverence" (I.iv.27), a king who taxes his subjects beyond their means and who disregards the laws and customs of inheritance when he determines to "Take Herford's right away" (II.i.195). In this atmosphere of neglect and abuse Northumberland's announcement that he and others are launching an effort to "shake off our slavish yoke" (II.i.291) sounds less like the language of an ambitious nobleman and more like the protest of a subject concerned about violations of his rights.

If Richard's failure at rule has consequences for the people, it also has consequences for Richard. One is his loss of popular support. How significant that loss is seems clear from the response Richard makes to the news that the Welsh have deserted him. Richard explains to Aumerle why he has suddenly grown "so pale":

But now the blood of twenty thousand men  
 Did triumph in my face, and they are fled;  
 And till so much blood thither come again,  
 Have I not reason to look pale and dead?  
 (III.ii.76–79)

In equating the blood of twenty thousand men with the blood that should be in his face, Richard is acknowledging that in a very important sense a king is, or should be, one with the people<sup>13</sup>—mystically joined to them and, indeed, comprised of them. This emphasis is one not usually associated with Shakespeare's plays, and particularly not with *Richard II*, a history play which has sometimes been thought of as a storehouse of materials on divine-right theory.<sup>14</sup> It may be instructive, then, to note that such ideas are also available in so standard and respectable a source as *De Laudibus Legum Angliae* (1470) by John Fortescue. Comparing the body politic and the natural body, Fortescue explains that just as the heart and blood give life to the natural body, "sembably in a bodye politike the intent of the people is the first lively thing, having within it bloud, that is to say, politike provision for the utilitie and wealth of the same people, which it dealeth furth & imparteth as wel to the head as to al the members of the same body wherby the body is nourished & main-

<sup>12</sup> See *Richard II*, II.i.246; IV.i.154, 272; and for the disrespect shown for the commons by Bagot and Bushy, II.i.129, 138.

<sup>13</sup> See Kantorowicz, *The King's Two Bodies*, p. 230, for a discussion of the tradition of distinguishing the head from the members of the body politic. Kantorowicz also discusses the tradition regarding "all Englishmen" as being "incorporated in the king," so that "the king's personal acts and deeds were those of a body politic absorbed by its monarchical head."

<sup>14</sup> A corrective to that view is offered by Moody Prior, *The Drama of Power* (Evanston: Northwestern Univ. Press, 1973), pp. 141–42.



tained.”<sup>15</sup> The life-blood that flows to the king from the people also flows from them to the laws, which, according to Fortescue, comprise “byndyng” sinews that allow the body to function properly (sig. Dviii<sup>v</sup>). Because the people are the heart and blood of the commonwealth, the source both for laws and for the king, Fortescue says that ultimately the king, the head of the body politic, receives a measure of his “power of the people,” a situation that makes it possible to “measure the power, which the king therof may exercise over the lawe and subjectes of the same” (sig. Ei<sup>r</sup>).<sup>16</sup>

This understanding of the composition of the body politic extends the implications of *Richard II*’s many references to the people who are leaving Richard. As they depart from him, the life in his body diminishes. The twenty-thousand Welshmen are but a small wound compared to the paleness and death that come over Richard’s kingship when the politic body’s other members, the “white-beards . . . boys. . . beadsmen . . . distaff-women . . . young and old” (III.ii.112–19), withdraw their support. The new recipient of that support is, of course, Bolingbroke, whom Richard had once mocked for giving himself over to the people’s “hearts” (I.iv.25). Misconceiving the consequences of Bolingbroke’s favor with the people, Richard has failed to recognize that the “reverence” he thought Bolingbroke uselessly “did throw away on slaves” was in reality a gesture that added life, first, to Bolingbroke’s legal cause and, later, to his growing political power.

The idea that Richard’s failure to rule properly has drained the lifeblood from his rule is similar to the notion implicit in the “bondslave” line. As we have seen, the line preceding—“Landlord of England art thou now, not king”—defines the nature of Richard’s failure. This line—“Thy state of law is bondslave to the law”—states the consequences of that failure, the paradox that a king who treats others as slaves will eventually lose his power over them, not augment it.

#### IV

To understand how this may be so, it is necessary to examine the notion current in Shakespeare’s time, but with roots that sixteenth-century lawyers understood to reach back to Henry of Bracton, that the law makes the king. This notion is important to bear in mind when one considers either Richard II or Bolingbroke-Henry IV, because both are kings whose right to rule comes under question. The concept comes into *Richard II* most explicitly when York, following Richard’s announcement that he plans to seize the deceased Gaunt’s “plate, his goods, his money, and his lands,” warns the king that failing to heed the laws of inheritance is akin to undermining the very laws upon which his right to the throne depends: “Take Herford’s rights away, and take from time / His charters, and his customary rights . . . For how art thou a king / But by fair sequence and succession?” (II.i.195–99). Through this reminder that the law makes Richard king, York is warning Richard that royal disregard

<sup>15</sup> John Fortescue, *A Learned Commendation of the Politique Lawes of Englande* [*De Laudibus Legum Angliae*], trans. Robert Mulcaster (London, 1567), sig. Dviii<sup>r</sup>.

<sup>16</sup> See the corresponding passage—“Originall influence of power from the bodie into the King is cause of the Kings dependencie in power upon the bodie”—in Richard Hooker’s *Of the Laws of Ecclesiastical Polity*, Book VIII, ed. P.G. Stanwood, *Folger Library Edition of the Works of Richard Hooker*, gen. ed. W. Speed Hill (Cambridge, Mass.: Belknap Press of Harvard Univ. Press, 1981), III, 339. Talbert, *The Problem of Order*, pp. 52–60, discusses this and other related passages from Hooker.

for the law gives license for subjects to disobey the law. Even worse, York says, Richard's disobedience puts him in the precarious position of a ruler acting in the absence of any authority—separating himself from that which gives him power in the first place.<sup>17</sup> In delivering such a warning, York takes a position similar to that expressed by Richard's contemporary, John Gower. In his discourse on the education of kings, in the seventh book of *Confessio Amantis*, Gower says:

What Kinge of lawe taketh no kepe  
By lawe he may no royalme kepe.  
Do lawe away, what is a kynge?  
Where is the right of any thyng  
If that there be no lawe in londe?<sup>18</sup>

The most influential English legal authority to define the king in this manner was Bracton, upon whom Gower, Fortescue, and many of their successors, including Richard Hooker and Francis Bacon, relied. As Bracton had written in his thirteenth-century treatise *De Legibus et Consuetudinibus Angliae*, "law makes the king. Let him therefore bestow upon the law what the law bestows upon him, namely rule and power. For there is no *rex* where will rules rather than *lex*."<sup>19</sup> These are complicated sentences open to various application and interpretation. What is of first importance to this essay is that here is a set of ideas all mutually dependent on one another, inseparable from one another. The law makes the king; the law makes the king powerful; and the king is to rule by law.

In *De Laudibus*, after declaring that the king "at the time of his coronation . . . is bound by an othe to the observance and keeping of his owne lawe," John Fortescue explains that to rule by law "is no yoke, but liberty and greate securitie not onely to the subjectes, but also to the kinge" (sig. Kvii<sup>r</sup>). If the king does not rule by law, does he become more powerful? No, Fortescue says; he trades what liberty and security he has for the yoke of impotence.<sup>20</sup> Ironically, he puts himself in a position analogous to that of a slave, one who has in effect no ability to plead to the law or make the law plead for him. As Quintilian had observed, "A slave cannot acquire his freedom without the consent of his master; a man assigned for debt can acquire it by paying his debt without the consent of his master being necessary. A slave is outside the law; a man assigned for debt is under the law."<sup>21</sup> Defined by law and made powerful

<sup>17</sup> See Kantorowicz, *The King's Two Bodies*, p. 158; Tierney, "Bracton on Government," p. 305.

<sup>18</sup> John Gower, *De Confessione Amantis* (London, 1532), sig. Diii<sup>r</sup>. For a discussion of the records and judgments which Gower left of Richard's kingship, as well as remarks on the legal authorities—including Henry of Bracton—who influenced Gower, see John H. Fisher, *John Gower* (New York: New York Univ. Press, 1964), pp. 106–22, and index. Rossiter, ed., *Woodstock*, p. 46, notes that the account of Richard II in John Stowe's *Annales* reproduces verses from Gower's *Vox Clamantis*; these verses include the line "when this King first beganne to raygne, the Laws neglected were."

<sup>19</sup> Henry of Bracton, *On the Laws and Customs of England [De Legibus et Consuetudinibus Angliae]*, ed. and trans. Samuel E. Thorne (Cambridge: Belknap Press of Harvard Univ. Press, 1968), II, 33. Among the writers who refer to this famous passage are Hooker, *Laws*, III, 496, 547; and Bacon, "Case of the Post-Nati," *Works*, VII, 646.

<sup>20</sup> At this point in *De Laudibus*, Mulcaster translates *ipsa impotentia* as "verye feblenes it selfe" (sig. Lviii<sup>r</sup>).

<sup>21</sup> Quintilian, *The Institutio Oratoria*, H. E. Butler, trans., Loeb Classical Library, 4 vols. (Cambridge: Harvard Univ. Press, 1920), III, Book VII. iii.27.



by law, a king forfeits his very freedom if he attempts to function "outside the law." If he thinks that abuse of law, which amounts to abuse of the relationship between king and people, will make him more powerful, he is deceived. To abuse the law is, in effect, to unavail himself of his authority; if he acts outside the law he soon finds that his relationship to the law deteriorates to that of a bondslave.

All of this Bracton knew. And this is what Gaunt means in *Richard II* when he defines Richard's situation as that of a landlord and a bondslave.

## V

I should like now to consider the opening three scenes of the play, examining one issue central to those scenes to show how they prepare for the moment when Gaunt assesses Richard as a landlord-bondslave.

In the opening scenes of the play, where Richard is king and Bolingbroke is subject, the issue that might be said to provide the conceptual basis for the action is the inviolability the Crown enjoys by virtue of the royal prerogative. By illustrating the power a king can wield if he chooses, the scenes also reflect some of the relationships between the concept of the king as an official made by law and under the law and the concept, more often used as a by-word for discussions of *Richard II*, that the king derives his power from God and is under God. For our purposes, the most important elements in that relationship are suggested by the sentences immediately preceding Bracton's assertion that "law makes the king." They include the famous Bractonian explanation that the king is "*non . . . sub homine sed sub deo et sub lege*."<sup>22</sup> According to Bracton, "The king has no equal within his realm. Subjects cannot be the equals of the ruler, because he would thereby lose his rule . . . because he would then be subjected to those subjected to him. The king must not be under man but under God and under the law, because law makes the king."

In making clear that the king is more powerful than the subject, Bracton's compact phrases helped future generations in their efforts to establish, among other things, a legal basis for the king's possession of extraordinary powers—his power to dispense with law, for example, and to determine cases according to equity.<sup>23</sup> These provisions gave the king a degree of authority thought necessary to ensure that a condition of justice and well-being was maintained in the state. Power to dispense with the law or, through equity, to correct the law, was given so that the king could better fulfill the ultimate intention of the law, which was to protect and preserve the commonwealth. By virtue of his being clearly defined as above his subjects, moreover, the king had the advantage of increased security. His superiority was of a sort that made it impossible for him to be brought to trial; he could not be sued. Or, as is often said, he was not amenable to the law.

Despite these prerogatives, however, the king was still to be regarded as

<sup>22</sup> For detailed discussion of this and other related passages in Bracton, see Kantorowicz, *The King's Two Bodies*, pp. 143–64, esp. 156; Tierney, "Bracton on Government," pp. 295–317; and Lewis, "King Above Law?," pp. 240–69.

<sup>23</sup> Discussions of the king's prerogative include Jacquelyn Janelle Renfrow Greenberg, "Tudor and Stuart Theories of Kingship: The Dispensing Power and the Royal Discretionary Authority in Sixteenth and Seventeenth Century England," University of Michigan diss., 1970; Elton, "The Rule of Law in Sixteenth-Century England," pp. 260–84; W. S. Holdsworth, *A History of English Law* (London: Methuen, 1923 rev. ed.), II, 252–53; III, 465; V, 207; and Joseph Chitty, *A Treatise on the Law of the Prerogatives of the Crown* (London: Joseph Butterworth and Son, 1820).

under the law.<sup>24</sup> It was by law that he possessed prerogatives, and it was presumed that, in his use of these special powers, he would always exercise the kind of self-restraint that would keep his rule in the interest of the commonwealth and within the intention of the law. Just a few lines after declaring the king “*non sub homine*,” Bracton goes on to say that the king must will “himself to be subjected to the law” even as had Jesus Christ, “lest his power remain unbridled.”

We hear this emphasis in *The Mirror for Magistrates* when Tresilian accuses Richard of “transcending the lymittes of his lawe” (p. 78) and also in *De Laudibus*, where, among many comments on the limits of the king’s power, Fortescue includes the reminder that the king “at the time of his coronation . . . is bound by an othe to the observance and keeping of his owne lawes” (sig. Kvi<sup>v</sup>). The same point of view is conveyed by Francis Bacon in “A Brief Discourse Upon the Commission of Bridewell” (1587): “the Law is the most highest inheritance the King hath; for by the law both the King and all his subjects are ruled and directed.”<sup>25</sup> In the Case of the Post-Nati, Bacon reiterates this position, acknowledging that, though the king has the power to dispense with certain laws in certain circumstances, thereby making him *solutus legibus*, “yet his acts and his grants are limited by law, and we argue them every day.”<sup>26</sup>

A problem that could develop under such principles is the one dramatized in the three opening scenes of *Richard II*. For the royal prerogative of immunity from prosecution could result in a situation whereby a king guilty of an illegal act would be free of having to answer for it. The commonwealth had no institution or procedure to compel a king to act in conformity with the law or to punish him for violating it.

In the first scene of the play, then, when Bolingbroke accuses Mowbray of treason, he is taking the only action he can against a king who is guilty of having ordered the murder of Gloucester, but whose prerogative renders him immune from trial.<sup>27</sup> With Richard occupying such an invulnerable position, the most Bolingbroke could accomplish would be to bring to trial the subordinate who exercised Richard’s will in the matter. Hence Bolingbroke’s action against Mowbray.

In the second scene of the play this context sheds light on Gaunt’s reply to the angry and despairing Duchess of Gloucester, who wants satisfaction for her husband’s murder. Gaunt is as aware as Bolingbroke that no legal action can be taken against the King. If Richard is ever to be punished, that punishment must come from God:

God’s is the quarrel—for God’s substitute,  
His deputy anointed in his sight,

<sup>24</sup> The position that the king was under the law even while exercising his royal prerogatives was the one defended by Edward Coke in his dispute with King James I. Traditional accounts of the dispute include Holdsworth, *A History of English Law*, V, 430–31; and D. Harris Willson, *King James VI and I* (London: Jonathon Cape, 1956), 243–70. Some modifications, reflecting the recent tendency to reassess the reign of James, are offered by W. J. Jones, “The Crown and the Courts in England 1603–1625,” *The Reign of James VI and I*, ed. Alan G. R. Smith (London: Macmillan, 1973), pp. 177–94.

<sup>25</sup> Francis Bacon, *Works*, ed. James Spedding, et. al. (London: Longman, 1859), VII, 509.

<sup>26</sup> Bacon, *Works*, VII, 646; see also Hooker, *Laws*, III, 341.

<sup>27</sup> For similar interpretations of the actions of both Bolingbroke and Richard in this scene, see Moody Prior, *The Drama of Power* (Evanston: Northwestern Univ. Press, 1973), pp. 143–46; and S. Schoenbaum, “*Richard II* and the Realities of Power,” *Shakespeare Survey*, 28 (1975), 10–12.

Hath caus'd his death; the which if wrongfully,  
 Let heaven revenge, for I may never lift  
 An angry arm against His minister.

(I.ii.37–41)

In reminding the Duchess that the King's authority derives ultimately from God and that the King is above his subjects, Gaunt is reflecting an understanding of the royal power and royal prerogative which coincides with the Bractonian assumptions we have been considering.

In the third scene Richard exercises his royal prerogative by halting the trial by combat and sentencing the combatants himself. The reason he gives for his action is that he wishes to avoid bloodshed. But the sentencing is also convenient for Richard, allowing him to get rid of both the man who played henchman for him and the man who sought to expose the King and his henchman.

While there is a sense in which the king's prerogative can be described as being provided by law to place the king above the law, his being always also under the law makes it possible for him to be judged according to the law. The opening scenes of *Richard II* call for the audience to render a judgment against Richard not only because he is implicated in a murder, but also because in both his scenes of confrontation with Bolingbroke and Mowbray (and most obviously in the second), Richard can be viewed as exercising the royal prerogative for his own self-interest rather than for the good of the commonwealth. Even though the prerogative that keeps Richard from being brought to trial makes him punishable by God alone, then, it is nevertheless true that Richard is still susceptible to criticism for not having bridled himself, as Bracton would have insisted, so that all his acts, including his use of the royal prerogative, would be in conformity with the law. Instead of accepting his responsibility to serve and execute the law, Richard has become "unstaied" (II.i.2). As a king "wanting the manage" of himself (III.iii.179), he has created conditions that promote the unruliness of others.

## VI

A similar judgment of Richard will be offered in the garden scene (the scene immediately preceding the deposition), another place in the play where the responsibilities of a God-given and a law-made kingship are set forth. This scene provides an occasion for recalling that one whose authority is stronger because it is from God as well as from the law not only accepts the advantages of great power when he accedes to the throne; he also assumes responsibility for fulfilling the demands of both God and the law. The king is empowered, but he is also obligated—to trim and dress the land, to "Keep law and form and due proportion" (III.iv.41). And just as Adam, whom God had "set to dress" another garden, was cast out from that paradisaal setting when he sought to satisfy his own desires instead of God's commands, so Richard's failure in stewardship to God and the law presages his expulsion from the sea-walled garden that is John of Gaunt's "other Eden."

Following the display, in Act I, of the ways in which Richard abuses his power, much of the rest of the play points, as does the garden scene, to the consequences of those abuses—consequences which nearly always involve Bolingbroke. Bolingbroke's re-entry into England is one of the first. That return must be judged illegal because it defies the order of banishment. But it also

serves as a reminder that Richard has furnished his subjects with a precedent for side-stepping the law. Moreover, because some of Richard's abuses have been particularly at Bolingbroke's expense, the latter's return directs attention quite specifically to the consequences of Richard's disregard of a subject's rights under the law. Before leaving England, as York has reminded Richard, Bolingbroke had hired attorneys to secure his inheritance in the event of his father's death.<sup>28</sup> When access to legal aid is denied him and the right to his inheritance is threatened, the banished Bolingbroke enters the country to maintain that which he believes to be his, according to his status under the law: "I am a subject, / And I challenge law; attorneys are denied me, / And therefore personally I lay my claim / To my inheritance of free descent" (II.iii.132–35). By refusing to buckle under as someone with no right to plead for justice under the law, Bolingbroke is expressing much the same sentiment as that of Northumberland's determination to "shake off our slavish yoke." For a commonwealth to exist, there must be, as Smith said, "a mutuall societie" with "law or pleading between thone and thother."

## VII

As Bolingbroke's status in the realm changes from that of subject to that of king, *Richard II* prompts an audience to think of yet other aspects of kingship. The central issue for Bolingbroke's rule, and one to which every play in the rest of the second tetralogy will return, is the threat to the realm when the king is not legally titled. Historically, great care was taken by Bolingbroke and his supporters to make Richard II's deposition and Henry IV's accession appear legal. Technically, Richard's power was given, not taken away; he deposed himself publicly in the presence of Parliament, a detail whose significant presence in *Richard II* Ernest Talbert has emphasized in his analysis of references to Parliament in the stage directions for the deposition scene.<sup>29</sup> Nevertheless, because the deposition is an interruption of the tradition of legal succession, Bolingbroke's power exists without the clear sanction of either the law or God, a point the Bishop of Carlisle addresses when he declares,

And shall the figure of God's majesty  
His captain, steward, deputy elect,  
Anointed, crowned, planted many years,  
Be judg'd by subject and inferior breath. . . .  
My Lord of Herford here, whom you call king,  
Is a foul traitor to proud Herford's king.  
(IV.i.125–28, 134–35)

Bacon, in the Case of the Post-Nati, explains that "toward the king himself the law doth a double office. . . the first is to intitle the king. . . . The second is . . . to make the ordinary power of the king more definite and regular" (p. 646).

<sup>28</sup> C. D. Ross, "Forfeiture for Treason in the Reign of Richard II," *EHR*, 71 (1956), 560–75, discusses the strong sentiment against the punishment of forfeiture of inheritance for treason and surveys various cases in which forfeiture was required or not required. J.M.W. Bean, *The Decline of English Feudalism 1215–1540* (Manchester: Manchester Univ. Press, 1968), studies the gradual deterioration of the Crown's position as feudal overlord, the constant struggles of both lords and tenants to protect their respective rights, and the control which landowners gradually acquired over their inheritances. I am indebted to the Reverend Eric McDermott, S.J. for both of these references.

<sup>29</sup> Talbert, *The Problem of Order*, p. 198.

Richard's transgressions are against the latter provision of the law, Bolingbroke's against the former. Consequently, Bolingbroke's power rests almost solely on public support, an element so sorely lacking in Richard that the authority which God and law had given him was undermined. Richard himself describes the precariousness of Bolingbroke's reign in his prophecy to Northumberland:

thou shalt think,  
 Though he divide the realm and give thee half,  
 It is too little, helping him to all;  
 He shall think that thou, which knowest the way  
 To plant unrightful kings, wilt know again . . .  
 To pluck him headlong from the usurped throne.  
 (V.i.59-65)

Bolingbroke is in the one position that Bracton said a ruler could least afford: "Subjects cannot be the equals of the ruler, because he would thereby lose his rule. . . . The king must not be under man."

It is, then, with a certain sad irony that one observes Bolingbroke demonstrating his capacity for rule. He announces his intention of returning Norfolk's lands to him, and he exercises the royal prerogative in a manner that benefits a subject when he acquits Aumerle of treason. The presence of some qualifications for kingship is not always sufficient compensation, however, for the absence of others. Thus it seems fitting that a play which begins with scenes recalling the murder Richard ordered should end with scenes referring to the murder of Richard. Unwilling to accept those aspects of kingship in which law is sovereign, both Richard and Bolingbroke separate themselves from that which makes the power of kings secure. Fortescue's conclusion that the king who refuses to rule by law thereby loses his freedom (sig. Kvii<sup>r</sup>) is thus aptly illustrated by the fates of both Richard and Bolingbroke. In their closing scenes (V.ii and V.iii), both kings are prisoners of guilt.

## VIII

The concepts of law that define king and commonwealth in *Richard II* and guide the audience's assessment of Richard's reign are the same standards that many of Shakespeare's contemporaries used to assess their own monarch and society. The presence of such concepts in *Richard II* would seem, then, to be incompatible with interpretations that consider the play to be about the passing of a period with a less modern kingship than that of the Renaissance, or interpretations that consider the play to be about the destruction of an era characterized by a kind and degree of order that could never be recreated.<sup>30</sup> On the contrary, the presence of these ideas about law and commonwealth in *Richard II* suggests that the dramatist saw in Richard's story an example of something that had happened once in England, and might happen again. Richard's story was a meaningful one for Shakespeare's own time, and the dramatist enacted it in a manner that allowed it to reflect the social and political ideals his own time revered.

<sup>30</sup> A view set forth in Alvin B. Kernan, "The Henriad: Shakespeare's Major History Plays," in *Modern Shakespearean Criticism*, Alvin B. Kernan, ed. (New York: Harcourt, Brace and World, 1970), pp. 245-75, and unquestioned by many scholars.

Realizing that the concept of a law-centered kingship is central to *Richard II* has implications both for the way one interprets this play and for the way one assesses its place in the second tetralogy. The political ideals that many of Shakespeare's contemporaries upheld appear in *Richard II* primarily through a succession of negative examples. In the English history plays that follow, the same assumptions prove pertinent, prompting an audience to apply the same standards in *1* and *2 Henry IV* and in *Henry V* as it assesses the degree to which the commonwealth is presented in terms of an ideal state of law. When the tetralogy is looked at from this point of view, a most important moment is the one in *2 Henry IV* when Hal, making his first entry as Henry V, announces to the Lord Chief Justice that he now takes him as his "father." That gesture indicates that Hal correctly comprehends what a king is and what a commonwealth should be:

You shall be as father to my youth,  
My voice shall sound as you do prompt mine ear,  
And I will stoop and humble my intents  
To your well-practis'd wise directions.  
(V.ii.118–21)

In acknowledging that he is under the law and in promising to act accordingly—and then in proceeding to banish the lawless Falstaff and summon Parliament—Hal offers assurance that his rule will be a responsible one and that he will always consider himself to be "busy for the commonwealth" (V.ii.76). Obviously Falstaff is wrong when he assumes, upon hearing that Hal is king, that "the laws of England are at my commandment" (V.iii.132–33). Rather, the laws will now be sovereign over king and subject alike. The days of having a landlord for a king, or a subject with as much power as the king, are finally past.<sup>31</sup>

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